1	JUDGE STEINBERG: Now is Dr. Bohlmann available for
2	cross-examination?
3	MS. SCHMELTZER: Yes, I'm sorry. Dr. Bohlmann is
4	available, oh, I'm sorry exhibit yes, Dr. Bohlmann is
5	available for cross-examination.
6	JUDGE STEINBERG: Okay. Mr. Honig?
7	MR. HONIG: Your Honor, first can I get a
8	clarification. Am I correct in assuming that the supportive
9	materials, the tabs 1 through 7, are admitted only for the
10	purposes for which the corresponding material in the text was
11	admitted?
12	JUDGE STEINBERG: I guess, yes.
13	MS. SCHMELTZER: all
14	JUDGE STEINBERG: Yes, they're just, I guess,
15	background. This is
16	MS. SCHMELTZER: Exactly. They, they support the
17	material in the text and I would note that a number of these
18	are documents from the Commission's files of which official
19	notice yes, we're only offering that to support the
20	statements
21	MR. HONIG: Then, then in that case, let, let me
22	just preserve an objection on the same point but, nonetheless,
23	move on and, and ask the witness questions.
24	CROSS EXAMINATION
25	BY MR. HONTG:

1	Q Dr. Bohlmann, good morning.
2	A Good morning.
3	Q Would you turn to page two in your prepared
4	testimony, please. There in paragraph four, at the bottom,
5	you state: we have always been proud of the station's track
6	record of programming service and their commitment to
7	nondiscrimination; hence, I signed the forms and sent them on
8	for filing with the FCC. The forms that are being spoken of
9	were the 1989 renewal application, were they not?
10	A Yes.
11	Q And was there any other basis for your signing
12	those forms?
13	A No.
14	Q Now if you would turn next to paragraph 15, at
15	the end of your declaration. There you state: I have known
16	both Paul Devantier and Dennis Stortz for many years; I know
17	that they are honest and are individuals of the highest
18	integrity who would never discriminate. And you stated that
19	that was your opinion. What, would you describe your basis
20	for that opinion?
21	A Yes. Please understand that a president of a
22	large organization like the church body has to depend to a
23	large extent on the character and demonstrated commitments,
24	theological in this case as well as technical and
25	professional, in choosing that particular person for that

position. So the character and the quality of leadership that one can expect is, to a large extent, determined by the, the personal integrity and honesty and commitments of the designees. Paul Devantier, for example, was my student many years ago. When I was the president of the seminary, he was the manager of the, the, the boss at the station with whom I consulted several times. And subsequently during my administration as the president of the church body, he served throughout most of that period as the, the church body's chief executive in the entire area of communications, covering all of its, its districts, 30-some districts, its colleges, seminaries, its various entities. I knew him both personally and professionally as a man of, of deep commitment to the church's own policies of nondiscrimination. In his own family life, pardon me, Paul, for saying this, his commitment is demonstrated by the fact that two of the members of his own household are bi-racial children, one adopted, one a foster The kind of commitment he has toward fair and just hiring practices and all other dimensions of the church's posture is demonstrable, and in my position and helping the board to choose its chief executive, questions of honesty, character, and the like are very important. And in, then in turn it mentioned Dennis Stortz, and the kinds of individuals that Paul would select as administrators of the, the stations, would be directly influenced by his own posture. So that's

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1	what I was intending to say with that statement.
2	Q Dr. Bohlmann, you're a good student of history,
3	are you not?
4	A I passed most of my courses.
5	Q Would you agree that a person can be held in
6	high esteem by many reasonable people for their character, but
7	nonetheless, in fact, engage in discrimination that, that may
8	be irrelevant to that opinion or unknown?
9	MS. SCHMELTZER: Objection, Your Honor. There is no
10	basis for that question.
11	MR. HONIG: Let me give you two examples.
12	MS. SCHMELTZER:
13	JUDGE STEINBERG: Wait
14	MR. HONIG: I'm sorry.
15	JUDGE STEINBERG: why don't you respond to that?
16	MR. HONIG: Pardon me?
17	JUDGE STEINBERG: Why don't you respond to the
18	objection?
19	MR. HONIG: May I, may I use
20	JUDGE STEINBERG: Well, you know, basically what
21	you're saying is does Dr. Bohlmann agree that people can be
22	outwardly different than they are inwardly. I think
23	MR. HONIG: Yes. And
24	JUDGE STEINBERG: I mean that's kind of an
25	unremarkable concept. Is that true, that

1	WITNESS: I would think it's common sense to infirm
2	that, that doesn't mean that it's true in this particular
3	case, however.
4	JUDGE STEINBERG: Okay.
5	MR. HONIG: Okay, that's fair enough.
6	JUDGE STEINBERG: I guess your objection is
7	overruled.
8	MR. HONIG: I don't mind.
9	BY MR. HONIG:
10	Q Dr. Bohlmann, when did Concordia Seminary begin
11	a training relationship with either of the radio stations?
12	A My impression is that it began already in the
13	1920's, but I don't, I don't have data to confirm that
14	impression.
15	Q And what is the date on which you're, you're,
16	the earliest date that you're certain from your data that the
17	relationship existed?
18	A My tenure as president of the seminary began in
19	1974. I was, however, a professor at the seminary in 1960 and
20	a student at the seminary from 1951 to 1956, and my impression
21	of the station and its ties to the seminary goes back to 1951,
22	when I began my student years at the seminary that I later
23	presided over.
24	MR. HONIG: Okay. Your Honor, in, in light of the
25	testimony that we just heard, I'd like to ask you to

reconsider a prior ruling relating to paragraphs 5 through 14,
and I would now as that the material from five through the end
of page, from paragraph 5 through the end of page 14 be
stricken, but that the remainder of page 14, which commences
in the year 1957, remain in, in evidence for the purposes that
you previously ruled.
MS. SCHMELTZER: Objection, Your Honor. The dates
that, that Dr. Bohlmann has spoken of were right in
paragraph one of his testimony. Mr. Honig did not move to
strike these paragraphs previously on that ground.
Dr. Bohlmann is fully capable of speaking about the history of
the station and the seminary during the period that he, that
preceded his actual positions there. Clearly we couldn't get
anybody who was alive in, or might not be able to get somebody
who was, who was alive in 1924 to come here and testify. So I
just, I don't see any basis for Mr. Honig's objection.
JUDGE STEINBERG: The objection's, your, your, it's
not an objection, it's a request for reconsideration of a
ruling
MR. HONIG: That's right.
JUDGE STEINBERG: is denied.
MR. HONIG: Reverend Bohlmann, do you have any
personal knowledge how radio station's equal employment
opportunity programs are carried out?
JUDGE STEINBERG: Let me just point out, also on

1	page six, there's reference to a Commission report of, report
2	of a Commission examiner whose name is Theodore Pierson. I'm
3	sure we all know the name Theodore Pierson. And it was in,
4	the decision of March 2nd, 1938, and it refers to the close
5	association of the station and the seminary was further
6	described by the Commission in its remarks that the talent
7	used by KFUO AM was drawn almost entirely from the membership
8	of the church, the faculty and student body of Concordia
9	Seminary, and prominent ministers, and well as its remark
10	etc., etc. And they were, and it's referred to attachment
11	four, pages six and seven. So we've gotten it back to at
12	least 1937 in the Commission document which, of which official
13	notice can be taken if, even if I hadn't admitted it. So
14	whether this individual has personal knowledge of went on,
15	what went on 1937 or not, it doesn't really matter. I mean he
16	can testify to this.
17	MR. HONIG: Yes. Yes, I understand and I accept,
18	yes.
19	JUDGE STEINBERG: It's an addition ground for
20	denying reconsideration.
21	BY MR. HONIG:
22	Q Let me restate the question I had asked, do you
23	have any personal knowledge of the implementation of the radio
24	station's equal employment opportunity program?
25	A Yes, I think so. I, I, my personal knowledge,

1	I mean, however, the kind of personal knowledge that a chief
2	executive officer of a church body would have. I know the, I
3	reviewed the documents, for example, before signing the
4	application for a license, and the documents would have
5	included the statements policies. I would have been briefed
6	frequently by the legal counsel, as I was already as
7	Seminary president on EEO requirements and stipulations, which
8	conform to the church's own theological position, and it would
9	have been my duty and it would have been a duty exercised to
10	inquire of people like Pastor Devantier and other officers of
11	the station as to their compliance with such requirements,
12	and, yes, I was personally involved in reviewing the
13	performance of the people and the station and the board in my
14	capacity as the chief executive of the senate.
15	Q And you, you just stated that it was your duty
16	to interact with Reverend Devantier and Mr. Stortz to ensure
17	that those policies were carried out?
18	A Primarily with, with Pastor Devantier, yes.
19	Q Now during the license, do you know what the
20	license term in question is?
21	A Yes.
22	Q During that time, did you meet with
23	Reverend Devantier and ask him what steps he was taking to
24	effectuate equal employment opportunity compliance?
25	A Yes, in a general way.

Do you remember when that meeting was or those 1 0 2 meetings were and specifically what, what was said? 3 Not specifically, no, that is to say many such A visits are held in the chief executive officer's capacity with, in a large organization like this. I, I would know 5 that, however, that Pastor Devantier would have sat with me 7 and walked me through the materials, and I would have asked 8 questions and then take it home and studied it before signing 9 it. 10 0 When you say would have, you did --11 I did, in fact, do so. I mean I, but I make A that supposition on the basis of my, my general practice as, 12 13 as the president. I don't have records and tape recordings and that kind of thing that would prove to me or to your 14 15 satisfaction that on such-and-such a day, I did this. But it 16 would have been my policy to do that and, therefore, I assume 17 that I did that. 18 Do you have any personal knowledge of the day 19 to day implementation of the equal employment opportunity 20 program of the station's? 21 The day to day? 22 Q The day to day, as opposed to how, the, what, 23 what you believe the church's policy was and so forth. 24 talking now about the nuts and bolts, the implementation of 25 it.

1	MS. SCHMELTZER: Your Honor, I would object because
2	Dr. Bohlmann is not being offered as a witness on that
3	particular aspect.
4	MR. HONIG: I'm permitted, I think
5	MS. SCHMELTZER: only the direct testimony.
6	MR. HONIG: I'm sorry, I think I'm permitted to, to
7	determine whether the answer to that is yes or no. And, Your
8	Honor, if the answer is no, that's my last question.
9	JUDGE STEINBERG: I'll overrule.
10	WITNESS: My knowledge of what you're calling day to
11	day would be primarily limited to what Paul Devantier or some
12	other officer of the station or of the board would, would
13	share with me by means of copies of correspondence and other
14	material, as well as my personal questions of such people when
15	I meet them. How is it going in your effort to recruit
16	minority people to the service in the ministry of KFUO, and
17	questions like that. Now is that day to day? I suppose to
18	some extent.
19	JUDGE STEINBERG: I think what Mr. Honig meant, and
20	correct me if I'm wrong, is if an announcer left or if a sales
21	person left or if the receptionist left, you wouldn't be
22	consulted before a replacement was hired, would you?
23	WITNESS: No. Not, not really.
24	JUDGE STEINBERG: Okay. That's what you meant,
25	isn't it?

1	MR. HONIG: That's right. And I'm, then I have no
2	further questions.
3	WITNESS: No, it was not my responsibility to engage
4	the, the actual personnel of the station.
5	MR. HONIG: That's it. I have no further questions.
6	JUDGE STEINBERG: Are you sure?
7	MR. HONIG: Yes. Yes, thank you, Your Honor.
8	JUDGE STEINBERG: Okay.
9	MR. HONIG: I appreciate that.
10	MS. SCHMELTZER: I don't believe the Bureau was
11	called
12	JUDGE STEINBERG: Do you have any questions?
13	MS. LADEN: didn't call but I do have one
14	question.
15	JUDGE STEINBERG: There, let me just say did you
16	object to them asking the question?
17	MS. LADEN: No, I don't object to it.
18	JUDGE STEINBERG: Okay. But it, you know, even
19	though they didn't call Dr. Bohlmann, their traditional role
20	is, as we all understand is, quote, mop-up men and ladies,
21	close quote, and so they're entitled to, in my opinion, to ask
22	whatever questions they want.
23	MS. LADEN: Thank you, Your Honor.
24	BY MS. LADEN:
25	Q Reverend Bohlmann you mentioned earlier in

1 | your testimony that you were president of Concordia Seminary?

A Yes.

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Q Isn't it true that, that as president of Concordia Seminary, the seminary had a -- with the station to hire students and their spouses to work at the station?

Yes, it is, but the, the nature of that arrangement perhaps is not a matter of written record. It's a, if you can imagine the, even the geographical setting of the station in the seminary, the seminary has a campus of 72 acres and the stations have a beautiful building on that The students, the faculty members live on the campus campus. for the most part over the years and, quote, arrangement, to use your words, has developed from the very beginning of the station. The seminary moved to that campus at about the time the station went into operation in the mid '20's. It, it is, it's part of the campus family and part of a campus community. It's assumed by the, those who manage the station's affairs and those who serve at the seminary that students, student wives in some cases, will be employed by the station whenever opportunities for employment present themselves. So, yes, if that qualifies as an arrangement. It did not need to become a legally binding document and, and to my knowledge there, there is no such document in the history of the seminary and the station, but a kind of word of mouth, a moral commitment to do that was self-understood, I believe, both at the station and

1	at the seminary. And then in my capacity as president, I
2	assume my predecessors did the same thing. Regular visits
3	with station personnel and, and terms of various arrangements,
4	for example the daily worship of the seminary is broadcast on
5	the stations and so there was consultation from time to time
6	as to how that might be enhanced, but employment practices,
7	too. We were very, very happy that the station, over the
8	years, employed many of our students, and that was an
9	arrangement of sorts.
10	Q Was your understanding of the arrangement that
11	they would give a preference to a seminarian or spouse of a
12	seminarian
13	A Yes, you know, assuming equal qualifications
14	for the position, we assumed that a seminary or seminary-
15	related person would be given top consideration.
16	MS. LADEN: I have no further questions.
17	JUDGE STEINBERG: Any re-direct?
18	MS. SCHMELTZER: I have no questions, Your Honor.
19	JUDGE STEINBERG: Okay. Dr. Bohlmann, thank you
20	very much for testifying. I appreciate it. And
21	Ms. Schmeltzer can inform you of the sequestration provisions
22	that we have. So let's go off the record.
23	MR. HONIG: Can get have 10:30 to get
24	JUDGE STEINBERG: Okay.
25	(Brief Recess.)

1	JUDGE STEINBERG: Mr. Honig, you wanted to bring
2	MR. HONIG: Your Honor, I have a preliminary matter
3	that, that came to my attention the middle of last week, and
4	the significance of it wasn't clear to me until last Friday,
5	and it turns out that this goes to the very heart of the, the
6	discrimination issue in this case and relates to testimony
7	that this witness might give, who I did not appreciate would
8	have any testimony on that issue. I'm not sure whether she's
9	offered on that issue, but she certainly has personal
10	knowledge of the matter that I'm about to describe to you. In
11	the course, and, and I wanted to do it without the witness
12	here, both so that, to, to maximize the likelihood that we
13	would get good testimony on it, and also to be sure that all
14	the objections got dealt with so it could go smoothly, for I
15	understand her health isn't good and, and I would like to be
16	able to do it in the smoothest way possible. One of the
17	exhibits that we proffered was, has not yet been marked for
18	identification but it's NAACP Exhibit 9, the declaration of
19	Karen Johnson. Karen Johnson was someone who we couldn't find
20	until last week, and she signed her declaration last
21	Wednesday. She states, in her declaration, she's an
22	African-American female. In 1990, she went by the name
23	Karen Henderson. She sought employment with the Lutheran
24	Employment Project and was referred to the radio station and
25	applied for the position of a receptionist on January 26th.

She had six years of experience as a receptionist. And she I was never interviewed for this or any other 2 3 position by KFUO. My, my clerk, Michael Blanton, prepared this declaration; that's his typing. Before we decided to 4 submit it, however, it, it puzzled me when I got it from 5 Mr. Blanton because I went in the materials we got from 6 discovery and found a form, which is page nine of our exhibit. 8 It's a handwritten form which I believe either is in Ms. Zika's writing or Ms. Zika supervised the person who did 9 This is an interview form on which Ms. Henderson scored 10 11 110 on various subjective categories such as punctual, pleasant voice, good appearance, motivated, organized, works 13 well with people, and dependable, pleasant person, and so 14 forth, and each of these items was scored from one to ten. 15 Mr. Blanton called her again and she said, no, it's true, they 16 never interviewed me; I showed up, gave them my application, 17 This was rather puzzling to us and we put it in, that was it. 18 and then it dawned on me what was really happening was 19 something more profound than what Ms. Henderson had to say, 20 and, and that is this, when we, I, I had originally considered 21 those forms of the type of Exhibit 9 to be unexceptional and 22 when I went through all of the discovery materials this 23 weekend, it confirmed what I feared had happened. There were 24 quite a number of those types of forms and I have assembled 25 them into an exhibit, NAACP Exhibit 63, which at this point

before marking it for identification, I would just like to 1 distribute, and I, these are as they were found in discovery 2 except for a line on each of them in brackets which identifies 3 4 the name of the person and the date of their application. didn't include the applications here. 5 JUDGE STEINBERG: Don't give any to the reporter 6 7 because you'll put that in your book and you'll give the whole 8 book to the reporter. 9 MR. HONIG: Okay. 10 JUDGE STEINBERG: We don't want to confuse the --11 MR. HONIG: Sure. These are not in the order that 12 they are found in the discovery material. They're in 13 alphabetical order for, for ease -- now, Your Honor, here is 14 what I am virtually certain happened. You heard the testimony yesterday of an individual who, the changed testimony rather 15 16 in which the original version was they wanted to hire a 17 minority. I think that that accurately states what happened 18 near the end of this license term, they wanted to hire a 19 minority, and they made an effort at that time to go to 20 minority sources and, in fact, interviewed, with one exception 21 as best I can tell, only minorities. That one exception was 22 an individual whose form is in there also, Mr. Terry Klasek,

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who was white. He was apparently referred by Catholic Social

Services. However, as to Mr. Klasek, he was an unusual white

man, he's the only person that I could find in the records for

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whom a criminal records check was performed, and here is a copy of Mr. Klasek's criminal records check. Now and that, this is NAACP Exhibit 64. Now --

JUDGE STEINBERG: And this, where did this come from?

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This, this also was produced in MR. HONIG: discovery. Now the point of my, and I want to be sure that I show the relevance and I want to do more than show the relevance, I want to show the extraordinary relevance in case there is any procedural rules that have to be waived. This case is about whether, among other things, there was discrimination against blacks, and part of that, Your Honor, relates to whether there were different standards applied to the hiring of blacks and whites. It is not only an issue which goes to whether in a particular case, a black person happened to be hired. If there were different standards, even if a person is hired pursuant to different standards, if they're considered only against others of the same race, that is the stigma, and the cases will, will show that. persons who are considered are subjected to different tests and different valuative criteria, that imposes a stigma which stays with the person throughout their tenure in the job. had been said for years that the Commission, for example, had a minority slot, and, and, and it was a common criticism of the agency that there was that slot, there was different

1	valuative criteria. These are jobs for these two positions,
2	the receptionist and the janitor position, for which
3	apparently all and nearly all the candidates were black and
4	blacks were hired, but apparently none of these forms of the
5	type used in '63 were used before that when, when most of the
6	applicants were white. Your Honor, I think that that's enough
7	of at least a prima facie case of a specific pattern and
8	practice covered by Section 208 of the rules, that this
9	witness will have personal knowledge of that I should be
10	permitted, in the circumstances, to inquire about.
11	JUDGE STEINBERG: Let me see if I understand this.
12	Miss, you think that these are in Ms. Zika's handwriting?
13	MR. HONIG: I believe they are.
14	MS. SCHMELTZER: Your Honor, we believe they are
15	not.
16	MR. HONIG: If they are not, I believe Ms. Zika will
17	know whose they are. She was the person responsible for the
18	hiring and supervision of receptionists and so forth.
19	JUDGE STEINBERG: Let me
20	MS. SCHMELTZER: That's, that's not true.
21	JUDGE STEINBERG: Let me, let me, I'm trying to
22	MS. SCHMELTZER: It would be the office manager.
23	JUDGE STEINBERG: Basically, what you want to do is
24	you want to expand the cross-examination of Ms. Zika to look
25	into things that were not raised in her direct examination?

1	MR. HONIG: Yes. They are raised in
2	MS. SCHMELTZER: Or, or the deposition, either. And
3	may I say that these documents have been in Mr. Honig's
4	possession since we first produced documents.
5	MR. HONIG: That is correct. And that's why, Your
6	Honor, I would like to have a ruling on this now. I don't
7	think that, by the way, and Ms. Schmeltzer is, is, is correct,
8	the documents were in over 5,000 documents that were produced
9	and, frankly, until Ms. Johnson came forward last week,
10	honestly I wish I could know in advance the significance of
11	each and every of those, one of those documents, maybe I'm a
12	little slow, but it only occurred to me after we had
13	Ms. Johnson's testimony and she explained the circumstances
14	and, and, and the other person that was hired being black and
15	so forth, and then it was very clear. Now, by the way, I
16	don't believe
17	JUDGE STEINBERG: Well, what, what, I'm, I'm having,
18	it's very clear to you, but I really haven't the foggiest idea
19	what's very clear to you. I don't see the point that you're
20	trying to make. I'm, I'm, is it only me, or is it other
21	people, too?
22	MR. HONIG: Judge, let me explain how, if I prove
23	what I say, of what I would say in my findings.
24	JUDGE STEINBERG: Okay. But, you know, basically
25	what you're saving is until when, late '89?

MR. HONIG: Until 1990, January 1990, after the 1 2 petition to deny was filed. 3 JUDGE STEINBERG: Was filed, then the station 4 started keeping books and records and --5 MR. HONIG: No. 6 JUDGE STEINBERG: No? 7 MR. HONIG: No. Then the station decided in a hurry 8 that they had to hire a minority. They arranged for the two 9 open vacancies to be placed in such a way that virtually all 10 the applicants would be minorities, one of whom they then hired for each vacancy, and they then subjected those 11 minorities to a battery of, I think, fairly, well, I don't 13 know what, what these are intended for, but a battery of, of tests and valuative criteria which, which were irregular and 14 which were not used for whites. 15 16 MS. SCHMELTZER: Your Honor, if I just may -- points 17 First of all, Mr. Honig started out by referring to 18 Karen Henderson's testimony. Her testimony is totally 19 irrelevant. The fact whether she was interviewed or not is 20 irrelevant because we hired a minority for that position, so 21 her testimony doesn't go in any, it's not material and it's 22 not relevant, it doesn't go to any issue in this case. 23 the fact is we hired two minorities in January, 1990. 24 Mr. Honig seems to be complaining about it. Now he's arguing 25 that we shouldn't have hired two minorities, I guess.

I'm not clear on that. But the fact is that minorities were hired and whether we use a form that had been used previously 2 3 or not is likewise irrelevant. It's not an issue in this The commission has not framed as an issue whether we 4 use testing practices that discriminated against minorities. 5 6 JUDGE STEINBERG: Let me hear from Mr. Zauner. 7 MR. HONIG: Sure. 8 MR. ZAUNER: Your Honor, it's the Bureau's position 9 that the station can use whatever criteria it wants to in 10 evaluating applicants for positions at the station. We would 11 agree with Mr. Honig that if the station was using different 12 tests for whites than they were using for minorities, that 13 that would be perhaps evidence of discrimination, especially 14 if those different standards were using, being used for the 15 purpose of excluding minorities from consideration for But that does not seem to be the case here. 16 positions. 17 Whatever standard was used resulted in the hiring of 18 minorities, not in their exclusion, so I don't see the 19 relevance of the information that's being presented by 20 Mr. Honig. 21 MR. HONIG: May I respond, Your Honor? 22 JUDGE STEINBERG: Briefly. 23 MR. HONIG: In the, you may be familiar with the 24 1974 Supreme case, Supreme Court case of Difumus (Phonetic)

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versus Arizona. Mr. Justice Douglas, it was an affirmative

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action case. Mr. Justice Douglas concurred, saying that there could be circumstances when a minority person considered for a 2 3 position which is in effect set aside for minorities, could feel stigmatized, that is that if it looks like you're being 4 5 hired only because it's to meet a quota to hire a minority, that it stigmatizes a person. 6 That's been a ruling that has 7 troubled much of the civil rights community for many years and 8 has come back to be quoted at the time that Mr. Clarence Thomas was appointed to the Supreme Court as the 10 person who President Bush said was the most qualified person. 11 And we've seen, we've, we've seen it happen. The point is that the EEO rule also covers what happens to a person once 12 they come to be employed, whether they are considered for 13 14 promotion, whether when they arrive at the station they have the same status and, and esteem as others who arrive, so 15 16 that even if a person is hired out of an all-minority pool and 17 then they go into the station under, and, and they were hired 18 under different rules, different criteria, with different 19 forms and different evaluations, they come into the station 20 separate from, unequal, with an inherent disadvantage. 21 Your Honor, it's a matter that I'd be happy to, to brief for 22 you in detail. If you're going to need me to present an 23 expert, I will do it. But I think it's important enough so 24 that we have the evidence in subject, even if it comes in as 25 an offer of proof and later gets stricken, I'll be happy to

1	supply you with a memorandum of law. But right now we've got
2	live witnesses and I think we ought to have them testify.
3	MS. SCHMELTZER: Ms. Zika was Mr. Honig didn't
4	even participate. This is clearly a discovery matter and I
5	object to it being used
6	JUDGE STEINBERG: Okay, let's, let's bring Ms. Zika
7	in and have her testify. You ask your questions. If there
8	are objections, I'll rule.
9	MS. SCHMELTZER: Well, Your Honor, I would like a
10	chance to
11	MR. HONIG: Your Honor
12	MS. SCHMELTZER: to show these to Ms. Zika and
13	see if she ever saw them
14	JUDGE STEINBERG: Okay
15	MR. HONIG: Your Honor, before we do, I'm, I'm also
16	concerned because the witness's health isn't well and I would
17	rather we get a ruling on it now
18	JUDGE STEINBERG: No, we'll get a ruling on it when
19	the questions are asked. I'm not going to rule in the
20	abstract. You have the specific question, you have an
21	objection, I will rule.
22	MS. SCHMELTZER: Well, I objected to this, I object
23	to this inquiry into a totally collateral matter that
24	JUDGE STEINBERG: Well, when he asks the questions,
25	you make your objections, then I'll rule.

1	MS. SCHMELTZER: Fine.
2	JUDGE STEINBERG: That's all. So what do you need,
3	how much time do you need?
4	MS. SCHMELTZER: Can we take, can we take about a
5	five minute break?
6	JUDGE STEINBERG: Yes. Let's take, be, be back at,
7	I guess, 10:50.
8	(Brief Recess.)
9	JUDGE STEINBERG: Okay, we're back on the record.
10	MS. SCHMELTZER: The Church calls Paula Zika.
11	JUDGE STEINBERG: Okay. Ms. Zika, would you raise
12	your right hand, please?
13	(Whereupon,
14	PAULA ZIKA
15	was called as a witness, and after having been duly sworn,
16	testified as follows:)
16 17	testified as follows:)  EXAMINATION
17	EXAMINATION
17 18	EXAMINATION BY JUDGE STEINBERG:
17 18 19	EXAMINATION  BY JUDGE STEINBERG:  Q Okay. Could you please state your name, and
17 18 19 20	EXAMINATION  BY JUDGE STEINBERG:  Q Okay. Could you please state your name, and address, and telephone number for the record?
17 18 19 20 21	EXAMINATION  BY JUDGE STEINBERG:  Q Okay. Could you please state your name, and address, and telephone number for the record?  A All right. Paula Zika. My address is
17 18 19 20 21 22	EXAMINATION  BY JUDGE STEINBERG:  Q Okay. Could you please state your name, and address, and telephone number for the record?  A All right. Paula Zika. My address is  319 Bellerive Drive, and that's Ballwin, Missouri, that's B A

1	BY JUDGE STEINBERG:
2	Q Let me just, it's my understanding that you
3	injured yourself?
4	A What I do
5	Q You got hurt?
6	A Yes, I did.
7	Q And what, what happened?
8	A I fell.
9	Q You fell and you broke something?
10	A I broke my breastbone.
11	Q You broke your breastbone. And you're under
12	medication?
13	A Yes.
14	Q And why don't, Mrs. Schmeltzer has that. Why
15	don't you read into the record
16	MS. SCHMELTZER: Ms. Zika is on acetaminophen with
17	codeine number three.
18	BY JUDGE STEINBERG:
19	Q Okay. And how long, how long have you been
20	taking that?
21	A Well, I take it only as I need for pain and
22	Q Okay.
23	A he gave it to me about a week after I had
24	done this.
25	Q And have you taken any today?